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Jefferson's Opinion on the Constitutionality of a National Bank : 1791

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I consider the foundation of the Constitution as laid on this ground: That " all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [XIIth amendment.] To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

I They are not among the powers specially enumerated: for these are: 1st A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2. "To borrow money." But this bill neither borrows money nor ensures the borrowing it. The proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public. The operation proposed in the bill first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To "regulate commerce with foreign nations, and among the States, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank, creates a subject of commerce in its bills, so does he who makes a bushel of wheat, or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external...

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for *the purpose of* providing for the general welfare." For the laying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised. They are not to lay taxes *ad libitum* for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

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It is an established rule of construction where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a *means* was rejected as an *end* by the Convention which formed the Constitution.

2. The second general phrase is, "to make all laws *necessary* and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not *necessary*, and consequently not authorized by this phrase.

If has been urged that a bank will give great facility or convenience in the collection of taxes, Suppose this were true: yet the Constitution allows only the means which are "*necessary*," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to everyone, for there is not one which ingenuity may not torture into a *convenience* in some instance *or other*, to *some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory

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It may be said that a bank whose bills would have a currency all over the States, would be more convenient than one whose currency is limited to a single State. So it would be still more convenient that there should be a bank, whose bills should have a currency all over the world. But it does not follow from this superior conveniency, that there exists anywhere a power to establish such a bank; or that the world may not go on very well without it.

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The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right of the Executive. 2. Of the Judiciary. 3. Of the States and State legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection,

It must be added, however, that unless the President's mind on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorized by the Constitution; if the pro and the con hang so even as to balance his judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President.

(1) Though the Constitution controls the laws of Mortmain so far as to permit Congress itself to hold land for certain purposes, yet not so far as to permit them to communicate a similar right to other corporate bodies.-T.J.

Source:
Ford, Paul Leicester

The Federalist : A commentary on the Constitution of the United States by Alexander Hamilton, James Madison and John Jay ed

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EXCERPTS

REPORT
of the
SECRETARY of the TREASURY [Alexander Hamilton]
of the
UNITED STATES,
on the subject of
MANUFACTURES.
presented to the
HOUSE of REPRESENTATIVES,
December 5, 1791

The SECRETARY of the TREASURY,

IN Obedience to the Order of the House of Representatives, of the 15th Day of January, 1790, has applied his Attention, at as early a Period as his other Duties would permit, to the Subject of Manufactures; and particularly to the Means of promoting such as well tend to render the United States independent on foreign Nations, for Military and other essential Supplies:

And he thereupon respectfully submits the following
REPORT.

The expediency of encouraging manufactures in the United States, which was no long since deemed very questionable, appears at this time to be pretty generally admitted. The embarrassments which have obstructed the progress of our external trade, have led to serious reflections on the necessity of enlarging the sphere of our domestic commerce: the restrictive regulations, which in foreign markets abridge the vent of the increasing surplus of our agricultural produce, serve to beget an earnest desire, that a more extensive demand for that surplus may be created at home: And the complete success conspiring with the promising symptoms which attend some less mature essays in others, justify a hope, that the obstacles to the growth of this species of industry are less formidable than they were apprehended to be; and that it is not difficult to find, in its further extension, a full indemnification for any external disadvantages, which are or may be experienced, as well as an accession of resources, favorable to national independence and safety.

[p3] It has been maintained that agriculture is, not only, the most productive but the only productive species of industry. The reality of this suggestion, in either respect, has, however, not been verified by any accurate detail of facts and calculations; and the general arguments, which are adduced to prove it, are rather subtil [*sic*] and paradoxical, than solid or convincing.

[p31] It is not uncommon to meet with an opinion that though the promoting of manufactures, may be the interest of a part of the union, it is contrary to that of another

part. The northern and southern regions are sometimes represented as having adverse interests in this respect. Those are called manufacturing, these agricultural states, and a species of opposition is imagined to subsist between the manufacturing and agricultural interests.

The idea of an opposition between those two interests is the common error of the early periods of every country, but experience gradually dissipates it. Indeed they are perceived so often to succour and to befriend each other, that they come at length to be considered as one; a supposition which has been frequently abused, and is not universally true. Particular encouragements of particular manufactures may be of a nature to sacrifice the interests of landholders to those of manufacturers; but it is nevertheless a maxim well established by experience, and generally acknowledged, where there has been sufficient experience, that the aggregate prosperity of manufactures, and the aggregate prosperity of agriculture are intimately connected. In the course of discussion which has had place, various weighty considerations have been adduced operating in support of that maxim. Perhaps the superior steadiness of the demand of a domestic market for the surplus produce of the soil, is alone a convincing argument of its truth.

In proportion as the mind is accustomed to trace the intimate connection of interest, which subsists between all the parts of a society, united under the *same* government; the infinite variety of channels which serve to circulate the prosperity of each to and through the rest, in that proportion will it be little apt to be disturbed by solitudes and apprehensions which originate in local discriminations. It is a truth as important, as it is agreeable, and one to which it is not easy to imagine exceptions, that everything tending to establish *substantial* and *permanent order*, in the affairs of a country, to increase the total mass of industry and opulence, is ultimately beneficial to every part of it. On the credit of this great truth, an acquiescence may safely be accorded, from every quarter, to all institutions, and arrangements, which promise a confirmation of public order, and an augmentation of national resource.

[p58] In countries where there is great private wealth much may be effected by the voluntary contributions of patriotic individuals; but in a community situated like that of the United States, the public purse must supply the deficiency of private resource. In what can it be so useful as in prompting and improving the efforts of industry?

**Proclamation against Opposition to Execution of Laws and Excise Duties in
Western Pennsylvania (August 7, 1794)**

George Washington

Whereas combinations to defeat the execution of the laws laying duties upon spirits distilled within the United States and upon stills have from the time of the commencement of those laws existed in some of the western parts of Pennsylvania; and

Whereas the said combinations, proceeding in a manner subversive equally of the just authority of government and of the rights of individuals, have hitherto effected their dangerous and criminal purpose by the influence of certain irregular meetings whose proceedings have tended to encourage and uphold the spirit of opposition by misrepresentations of the laws calculated to render them odious; by endeavors to deter those who might be so disposed from accepting offices under them through fear of public resentment and of injury to person and property, and to compel those who had accepted such offices by actual violence to surrender or forbear the execution of them; by circulating vindictive menaces against all those who should otherwise, directly or indirectly, aid in the execution of the said laws, or who, yielding to the dictates of conscience and to a sense of obligation, should themselves comply therewith; by actually injuring and destroying the property of persons who were understood to have so complied; by inflicting cruel and humiliating punishments upon private citizens for no other cause than that of appearing to be the friends of the laws; by intercepting the public officers on the highways, abusing, assaulting, and otherwise ill treating them; by going to their houses in the night, gaining admittance by force, taking away their papers, and committing other outrages, employing for these unwarrantable purposes the agency of armed banditti disguised in such manner as for the most part to escape discovery; and

Whereas the endeavors of the Legislature to obviate objections to the said laws by lowering the duties and by other alterations conducive to the convenience of those whom they immediately affect (though they have given satisfaction in other quarters), and the endeavors of the executive officers to conciliate a compliance with the laws by explanations, by forbearance, and even by particular accommodations rounded on the suggestion of local considerations, have been disappointed of their effect by the machinations of persons whose industry to excite resistance has increased with every appearance of a disposition among the people to relax in their opposition and to acquiesce in the laws, insomuch that many persons in the said western parts of Pennsylvania have at length been hardy enough to perpetrate acts which I am advised amount to treason, being overt acts of levying war against the United States, the said persons having on the 16th and 17th July last proceeded in arms (on the second day amounting to several

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hundreds) to the house of John Neville, inspector of the revenue for the fourth survey of the district of Pennsylvania; having repeatedly attacked the said house with the persons therein, wounding some of them; having seized David Lenox, marshal of the district of Pennsylvania, who previous thereto had been fired upon while in the execution of his duty by a party of armed men, detaining him for some time prisoner, till for the preservation of his life and the obtaining of his liberty he found it necessary to enter into stipulations to forbear the execution of certain official duties touching processes issuing out of a court of the United States; and having finally obliged the said inspector of the said revenue and the said marshal from considerations of personal safety to fly from that part of the country, in order, by a circuitous route, to proceed to the seat of Government, avowing as the motives of these outrageous proceedings an intention to prevent by force of arms the execution of the said laws, to oblige the said inspector of the revenue to renounce his said office, to withstand by open violence the lawful authority of the Government of the United States, and to compel thereby an alteration in the measures of the Legislature and a repeal of the laws aforesaid; and

Whereas by a law of the United States entitled "An act to provide calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," it is enacted "that whenever the laws of the United States shall be opposed or the execution thereof obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by that act, the same being notified by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such State to suppress such combinations and to cause the laws to be duly executed. And if the militia of a State where such combinations may happen shall refuse or be insufficient to suppress the same, it shall be lawful for the President, if the Legislature of the United States shall not be in session, to call forth and employ such numbers of the militia of any other State or States most convenient thereto as may be necessary; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session: Provided always, That whenever it may be necessary in the judgment of the President to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time ;" and

Whereas James Wilson, an associate justice, on the 4th instant, by writing under his hand, did from evidence which had been laid before him notify to me that "in the counties of Washington and Allegany, in Pennsylvania, laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshal of that district;" and

Whereas it is in my judgment necessary under the circumstances of the case to take measures for calling forth the militia in order to suppress the combinations aforesaid, and to cause the laws to be duly executed; and I have accordingly determined so to do, feeling the deepest regret for the occasion, but withal the most solemn conviction that the essential interests of the Union demand it, that the very existence of Government and the fundamental principles of social order are materially involved in the issue, and that the patriotism and firmness of all good citizens are seriously called upon, as occasions may require, to aid in the effectual suppression of so fatal a spirit:

Wherefore, and in pursuance of the proviso above recited, I, George Washington, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before the 1st day of September next to disperse and retire peaceably to their respective abodes. And I do moreover warn all persons whomsoever against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts, and do require all officers and other citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous proceedings.

In testimony whereof I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand.

Done at the city of Philadelphia, the 7th day of August, 1794, and of the Independence of the United States of America the nineteenth.

GO. WASHINGTON.

By the President:

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President George Washington's Farewell Address - 1796

(abridged)

Friends and Fellow Citizens:

The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made...Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a people.

The unity of government which constitutes you one people is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquility at home, your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize. But as it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

It is important, likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional

powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

Observe good faith and justice towards all nations; cultivate peace and harmony with all... Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur... So likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists... Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government... Our detached and distant situation invites and enables us to pursue a different course. If we remain one people under an efficient government... In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish; that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations...

United States 19th September, 1796

Geo. Washington

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Sedition Act, 1798

Also known as: Alien and Sedition Acts, 1798

Date: 1798

U.S. federal legislation enacted on July 14, 1798, that gave the U.S. government broad powers to repress treasonable activities. One of the U.S. Alien and Sedition Acts of 1798, it prohibited citizens or aliens from conspiring against the operation of federal laws; from preventing federal officials from executing their duties; and from aiding any insurrection, riot, or unlawful assembly. It outlawed the publication of any "false, scandalous and malicious writing" against the government and any effort to incite opposition to the government. Twenty-five Anti-Federalist editors or printers were arrested and ten were convicted under this law. Opposition to the act, expressed in the Virginia and Kentucky Resolutions, led to the decline of the Federalist Party. The act expired in 1801.

The original spellings have been retained in this document.

Sedition Act (1798)

From: United States Statutes at Large, 5th Cong., Sess. II, p. 596-597

July 14, 1798

AN ACT

In addition to the act, entitled "An act for the punishment of certain crimes against the United States."

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to*

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intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advise, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

Sec. 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

Sec. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

Sec. 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

Approved, July 14, 1798.



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Virginia Resolutions, 1798

Date: 1798

Resolutions drafted by James Madison and adopted by the Virginia legislature on December 24, 1798; they declared the U.S. Alien and Sedition Acts of 1798 to be unconstitutional and appealed to the other states to make similar declarations. Like the 1798 Kentucky Resolutions, the Virginia document expressed loyalty to the Union and urged Congress to repeal the acts. It claimed that the federal government represented a "compact" between the states and therefore held only those powers specifically delegated to it by the states; passage of the Alien and Sedition Acts exceeded those powers. Though Congress took no action, the resolutions contributed to the defeat of the Federalist Party in the election of 1800.

The original spellings have been retained in this document.

Virginia Resolutions (1798)

James Madison

From: Documents of American History, Vol. I, ed. Henry Steele Commager, p. 182- 183

December 24, 1798

Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this state, against every aggression either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former.

That this Assembly most solemnly declares a warm attachment to the union of the states, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the states, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

That the General Assembly doth particularly Protest against the palpable and alarming infractions of the Constitution in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of [the] executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution: and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto,--a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

That this state having, by its Convention which ratified the Federal Constitution, expressly declared that, among other essential rights, "the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution,--it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the order.

That the good people of this commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this state, in maintaining unimpaired the authorities, rights, and liberties reserved to the states respectively, or to the people. .



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From Street Law & The Supreme Court Historical Society's "Landmark Cases" website *Marbury v. Madison*.
Web site: <http://www.landmarkcases.org/marbury/home.htm>

Marbury v. Madison (1803)

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each."

—Chief Justice John Marshall

Web site: <http://www.landmarkcases.org/marbury/majority.html>

Key Excerpts from the Majority Opinion

Chief Justice John Marshall delivered the opinion of the Court.

In the order in which the court has viewed this subject, the following questions have been considered and decided.

1. Has the applicant a right to the commission he demands?
2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?
3. If they do afford him a remedy, is it a mandamus issuing from this court?

...

In order to determine whether he is entitled to this commission, it becomes necessary to inquire whether he has been appointed to the office. . . .

Mr. Marbury . . . since his commission was signed by the president, and sealed by the secretary of state, was appointed. . . .

To withhold the commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

This brings us to the second inquiry; which is, 2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy? The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. . . .

It is then the opinion of the Court, 1. That by signing the commission of Mr. Marbury, the president of the United States appointed him a justice of peace . . . and that the seal of the United States, affixed thereto by the secretary of state, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years. 2. That, having this legal title to the

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office, he has a consequent right to the commission; a refusal to deliver which is a plain violation of that right, for which the laws of his country afford him a remedy.

It remains to be inquired whether, 3. He is entitled to the remedy for which he applies. This depends on, 1. The nature of the writ applied for. 2. The power of this court. 1. The nature of the writ....

This writ, if awarded, would be directed to an officer of government, and its mandate to him would be . . . "to do a particular thing therein specified, which appertains to his office and duty, and which the court has previously determined or at least supposes to be consonant to right and justice . . . "

These circumstances certainly concur in this case. . . .

This, then, is a plain case of a mandamus, either to deliver the commission, or a copy of it from the record; and it only remains to be inquired, Whether it can issue from this court.

The act to establish the judicial courts of the United States authorizes the supreme court "to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." The secretary of state, being a person, holding an office under the authority of the United States, is precisely within the letter of the description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional. . . .

The constitution vests the whole judicial power of the United States in one supreme court, and such inferior courts as congress shall, from time to time, ordain and establish. . . .

In the distribution of this power it is declared that "the supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the supreme court shall have appellate jurisdiction. . . . "

If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested.. . . If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance. . . .

To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction. . . .

It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. . . .

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution. . . .

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. . . .

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. . . .

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other the courts must decide on the operation of each. . . .

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. . . .

Questions to Consider:

1. If the Supreme Court of the United States had issued the *writ of mandamus*, how could they have forced Madison to comply with the order? What would have happened if he had ignored it? (In other words, does the Court have enforcement power?)
2. In the Court's opinion, is Marbury entitled to his appointment?
3. According to the decision, does the Supreme Court of the United States have the authority to issue a *writ of mandamus* to force Madison to deliver the commission? Explain. Is there any way to reverse the Court's decision?
4. In this case, Chief Justice John Marshall and the Court "gave up some power in order to get more." Explain. What power did they give up? What power did they gain? Why did the Court do this?
5. Why does the judicial branch, as opposed to the executive or legislative branch, have the power of judicial review?
6. Imagine that Jefferson, rather than Adams, had appointed the Chief Justice of the Supreme Court. Would the outcome of this case, and the future of the country, have been different? Why?

H Jefferson on Louisiana Purchase

Document 3: To John Breckinridge

Monticello, August 13, 1803

...It gives me great occasion to write a word to you on the subject of Louisiana, which being a new one, an interchange of sentiments may produce correct ideas before we are to act on them.

Our information as to the country is very incomplete; we have taken measures to obtain it full as to the settled part, which I hope to receive in time for Congress. The boundaries, which I deem not admitting question, are the high lands on the western side of the Mississippi enclosing all its waters, the Missouri of course, and terminating in the line drawn from the northwestern point of the Lake of the Woods to the nearest source of the Mississippi, as lately settled between Great Britain and the United States. We have some claims, to extend on the seacoast westward to the Rio Nune or Bravo, and better, to go eastwardly to the Rio Perdido, between Mobile and Pensacola, the ancient boundary of Louisiana. These claims will be a subject of negotiation with Spain, and if, as soon as she is at war, we push them strongly with one hand, holding out a price in the other, we shall certainly obtain the Floridas, and all in good time. In the meanwhile, without waiting for permission, we shall enter into the exercise of the natural right we have always insisted on with Spain, to wit, that of a nation holding the upper part of streams, having a right of innocent passage through them to the Ocean. We shall prepare her to see us practice on this, and she will not oppose it by force.

Objections are raising to the eastward against the vast extent of our boundaries, and propositions are made to exchange Louisiana, or a part of it, for the Floridas. But, as I have said, we shall get the Floridas without, and I would not give one inch of the waters of the Mississippi to any nation, because I see in a light very important to our peace the exclusive right to its navigation, and the admission of no nation into it, but as into the Potomac or Delaware, with our consent and under our police. These federalists see in this acquisition the formation of a new confederacy, embracing all the waters of the Mississippi, on both sides of it, and a separation of its eastern waters from it. These combinations depend on so many circumstances which we cannot foresee, that I place little reliance on them. We have seldom seen neighborhood produce affection among nations. The reverse is almost the universal truth. Besides, if it should become the great interest of those nations to separate from this, if their happiness should depend on it so strongly as to induce them to go through that convulsion, why should the Atlantic States dread it? But especially why should we, their present inhabitants, take side in such a question? When I view the Atlantic, procuring for those on the eastern waters of the Mississippi friendly instead of hostile neighbors on its western waters, I do not view it as an Englishman would be procuring future blessings for the French nation, with whom he has no relations of blood or affection. The future inhabitants of the Atlantic and Mississippi States will be our sons. We leave them in distinct but bordering establishments. We think we see their happiness in their union, and we wish it. Events may prove it otherwise and if they see their interest in separation, why should we take side with our Atlantic rather than our Mississippi descendants? It is he elder and the younger son differing. God bless them both, and keep them in union, if it be for their good, but separate them, if it be better. The inhabited part of Louisiana, from Point Coupee to the sea, will of course be immediately a territorial government, and soon a State. But above that, the best use we can make of the country for some time, will be to give establishments in it to the Indians on the east side of the Mississippi, in exchange for their present country, and open land offices in the last, and thus make this acquisition the means of filling up the eastern side, instead of drawing off its population. When we shall be full on this side, we may lay off a range of states on the western bank from the head to the mouth, and so, range after range, advancing

compactly as we multiply.

This treaty must of course be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the union for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The executive in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution. The Legislature in casting behind them in metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them unauthorized, what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian, investing themoney of his ward in purchasing an important adjacent territory; and saying to him when of age, I did this for your good; I pretend to no right to bind you: you may disavow me, and I must get out of the scrape as I can: I thought it my duty to risk myself for you. But we shall not be disavowed by the nation, and their act of indemnity will confirm and not weaken the Constitution, by more strongly marking out its lines

I
TO THOMAS JEFFERSON FROM THE DANBURY
BAPTIST ASSOCIATION, [AFTER 7 OCTOBER
1801]

From the Danbury Baptist Association

[after 7 Oct. 1801]

SIR,

Among the many millions in America and Europe who rejoice in your Election to office; we embrace the first opportunity which we have enjoy'd in our collective capacity, since your Inauguration, to express our great satisfaction, in your appointment to the chief Magistracy in the United States: And though our mode of expression may be less courtly and pompous than what many others clothe their addresses with, we beg you, Sir to believe, that none are more sincere.

Our Sentiments are uniformly on the side of Religious Liberty—That Religion is at all times and places a Matter between God and Individuals—That no man ought to suffer in Name, person or effects on account of his religious Opinions—That the legitimate Power of civil Government extends no further than to punish the man *who works ill to his neighbour*: But Sir, our constitution of government is not specific. Our antient charter, together with the Laws made coincident therewith, were adopted as the Basis of our government, At the time of our revolution; and such had been our Laws & usages, & such still are; that religion is consider'd as the first object of Legislation; & therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights: and these favors we receive at the expence of such degrading acknowledgements as are inconsistent with the rights of freemen. It is not to be wondred at therefore; if those, who seek after *power & gain* under the pretence of *government & Religion* should reproach their fellow men—should reproach their chief Magistrate, as an enemy of religion Law & good order because he will not, dares not assume the prerogative of Jehovah and make Laws to govern the Kingdom of Christ.

Sir, we are sensible that the President of the united States, is not the national Legislator, & also sensible that the national government cannot destroy the Laws of each State; but our hopes are strong that the sentiments of our beloved President, which have had such genial Effect already, like the radiant beams of the Sun, will shine & prevail through all these States and all the world till Hierarchy and tyranny be destroyed from the Earth. Sir when we reflect on your past services, and see a glow of philanthropy and good will shining forth in a course of more than thirty years we have reason to believe that America's God has raised you up to fill the chair of State out of that good will which he bears to the Millions which you preside over. May God strengthen you for the arduous task which providence & the voice of the people have cal'd you to sustain and support you in your Administration against all the predetermin'd opposition of those who wish to rise to wealth & importance on the poverty and subjection of the people

And may the Lord preserve you safe from every evil and bring you at last to his Heavenly Kingdom throug Jesus Christ our Glorious Mediator.

Signed in behalf of the Association

NEHH.
DODGE

The
Committee

1

EPHM.
ROBBINS

STEPHEN S
NELSON

TO THE DANBURY BAPTIST ASSOCIATION, 1 JANUARY 1802

V. To the Danbury Baptist Association

Jan. 1. 1802.

GENTLEMEN

The affectionate sentiments of esteem and approbation which you are so good as to express towards me, on behalf of the Danbury Baptist association, give me the highest satisfaction. my duties dictate a faithful & zealous pursuit of the interests of my constituents, & in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing.

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that *their* legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church & State. adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves & your religious association, assurances of my high respect & esteem.

TH: JEFFERSON

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Embargo Act

Date: 1807

Legislation enacted by the U.S. Congress on December 22, 1807, that prohibited all international trade to and from U.S. ports. The act was designed to deny raw materials to both Great Britain and France, then at war with each other, and to persuade them to cease practices that were damaging American commerce, such as the seizure of neutral commercial ships and the impressment of American sailors. Rather than achieving its goal, the act dramatically lowered American exports, denied merchants and producers their income from raw materials, cost sailors their jobs, and forced the closure of American ports. This unpopular and unsuccessful legislation was repealed on March 1, 1809, and was later replaced by the U.S. Non-Intercourse Act.

The original spellings have been retained in this document.

Embargo Act (1807)

From: *United States Statutes at Large*, 10th Cong., Sess. I, Chp. 5, 1807, p. 451-453

December 22, 1807

AN ACT

Laying an Embargo on all ships and vessels in the ports and harbors of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an embargo be, and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States: and that the President be authorized to give such instructions to the officers of the revenue, and of the navy and revenue cutters of the United States, as shall appear best adapted for carrying the same into full effect: *Provided*, that nothing herein contained shall be construed to prevent the departure of any foreign ship or vessel, either in ballast, or with the goods, wares and merchandise on board of such foreign ship or vessel, when notified of this act.

Sec. 2. *And be it further enacted*, That during the continuance of this act, no registered, or sea letter vessel, having on board goods, wares and merchandise, shall be allowed to depart from one port of the United States to any other within the same, unless the master, owner, consignee or factor of such vessel shall first give bond, with one or more sureties to the collector of the district from which she is bound to depart, in a sum of double the value of the vessel and cargo, that the said goods, wares, or merchandise shall be relanded in some port of the United States, dangers of the seas excepted, which bond, and also a certificate from the collector where the same may be relanded, shall by the collector respectively be transmitted to the Secretary of the Treasury. All armed vessels possessing public commissions from any foreign power, are not to be considered as liable to the embargo laid by this act.

Approved, December 22, 1807.

<http://www.fofweb.com/NuHistory/default.asp?ItemID=WE52&NewItemID=True>



http://highered.mcgraw-hill.com/sites/0072900423/student_view0/chapter7/image_quiz.html

K

HARTFORD CONVENTION 1814

Resolved. - That it be and hereby is recommended to the Legislatures of the several States represented in this Convention to adopt all such measures as may be necessary effectually to protect the citizens of said States from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provisions, subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments, not authorized by the Constitution of the United States

Resolved. - That it be and hereby is recommended to the said Legislatures, to authorize an immediate and earnest application to be made to the Government of the United States, requesting their consent to some arrangement, whereby the said States may, separately or in concert, be empowered to assume upon themselves the defense of their territory against the enemy, and a reasonable portion of the taxes, collected within said States, may be paid into the respective treasuries thereof, and appropriated to the payment of the balance due said States, and to the future defense of the same. The amount so paid into the said treasuries to be credited, and the disbursements made as aforesaid to be charged to the United States.

Resolved. - That it be, and it hereby is, recommended to the Legislatures of the aforesaid States, to pass laws (where it has not already been done) authorizing the Governors or Commanders-in-Chief of their militia to make detachments from the same, or to form voluntary corps, as shall be most convenient and conformable to their Constitutions, and to cause the same to be well armed equipped and disciplined, and held in readiness for service; and upon the request of the Governor of either of the other States, to employ the whole of such detachment or corps, as well as the regular forces of the State, or such part thereof as may be required and can be spared consistently with the safety of the State, in assisting the State, making such request to repel any invasion thereof which shall be made or attempted by the public enemy.

Resolved. - That the following amendments of the Constitution of the United States, be recommended to the States as aforesaid, to be proposed by them for adoption by the State Legislatures, and, in such cases as may be deemed expedient, by a Convention chosen by the people of each State.

And it is further recommended, that the said States shall persevere in their efforts to obtain such amendments, until the same shall be effected.

First. - Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, and all other persons.

Second. - No new State shall be admitted into the union by Congress in virtue of the power granted by the Constitution, without the concurrence of two-thirds of both Houses.

Third. - Congress shall not have power to lay any embargo on the ships or vessels of the citizens of the United States, in the ports or harbors thereof, for more than sixty days.

Fourth. - Congress shall not have power, without the concurrence of two-thirds of both Houses, to interdict the commercial intercourse between the United States and any foreign nation or the dependencies thereof.

Forth. - Congress shall not make or declare war, or authorize acts of hostility against any foreign nation, without the concurrence of two-thirds of both Houses, except such acts of hostility be in defense of the territories of the United States when actually invaded.

Sixth. - No person who shall hereafter be naturalized, shall be eligible as a member of the Senate or House of Representatives of the United States, nor capable of holding any civil office under the authority of the United States.

Seventh. - The same person shall not be elected President of the United States a second time; nor shall the President be elected from the same State two terms in succession.

Resolved. - That if the application of these States to the government of the United States, recommended in a foregoing Resolution, should be unsuccessful, and peace should not be concluded and the defense of these States should be neglected, as it has been since the commencement of the war, it will in the opinion of this Convention be expedient for the Legislatures of the several States to appoint Delegates to another Convention, to meet at Boston, in the State of Massachusetts, on the third Thursday of June next with such powers and instructions as the exigency of a crisis so momentous may require.